

**STATE OF RHODE ISLAND  
PROVIDENCE COUNTY**

**SUPERIOR COURT**

PETER F. KILMARTIN, ATTORNEY  
GENERAL OF THE STATE OF RHODE  
ISLAND,

Plaintiff/Appellant

v.

C.A. PC

KATHLEEN C.HITTNER, MD, IN HER  
CAPACITY AS HEALTH INSURANCE  
COMMISSIONER FOR THE STATE OF  
RHODE ISLAND,

Defendant/Appellee

**COMPLAINT**

**Parties**

1. Peter F. Kilmartin is the Plaintiff/Appellant and is duly elected Attorney General of the State of Rhode Island bringing this action on behalf of the State of Rhode Island. Pursuant to R.I. Gen. Laws §27-36-1, the Attorney General represents, protects and advocates the rights of consumers at rate hearings pertaining to insurance rate filings.

2. Kathleen C. Hittner, M.D. is the Defendant/Appellee and is the duly appointed Health Insurance Commissioner with jurisdiction to hear and determine the rate filing.

**Introduction**

3. On May 15, 2015, Blue Cross and Blue Shield of Rhode Island (hereinafter "Blue Cross") filed with the Office of Health Insurance Commissioner (hereinafter "OHIC") a request to increase the rates it charges its subscribers in the individual or Direct Pay market. This filing was subsequently amended on June 1, 2015 (hereinafter "the rate filing").

4. Public hearings were held regarding the rate filing on July 7 and July 8, 2015, at which time evidence was presented and testimony was taken from representatives of Blue Cross, OHIC and the Attorney General.

5. A Report and Recommendation was issued by Hearing Officer Raymond Marcaccio, Esq., on July 27, 2015. A true and accurate copy of the Report and Recommendation is attached hereto as **Exhibit A**.

6. A Decision and Order was issued by Commissioner Kathleen Hittner on August 3, 2015. A true and accurate copy of this Decision and Order is attached hereto as **Exhibit B**. This Decision and Order briefly stated that it adopted the Report and Recommendation issued by Hearing Officer Marcaccio with two exceptions, without providing any findings of fact or other support for doing so.

7. On August 7, 2015, Attorney General Peter F. Kilmartin filed a Motion for Reconsideration with Commissioner Hittner, seeking findings of fact and conclusions of law, separately stated as required by the Administrative Procedures Act, R.I. Gen. Laws §42-35-12. A true and accurate copy of Attorney General's Motion for Reconsideration is attached hereto as **Exhibit C**.

8. On August 19, 2015, Commissioner Hittner issued an Amended Order and Decision (hereafter "the Amended Decision"), a true and accurate copy of which is attached hereto as **Exhibit D**. The Amended Decision reached essentially the same result as the August 3, 2015 Decision and Order, but provided some findings of fact and conclusions of law in an effort to support the Commissioner's Amended Decision.

9. The Attorney General, as the statutory representative of consumers who has the responsibility to represent, protect and advocate the rights of consumers at rate hearings pertaining to insurance rate filings is an aggrieved party in a contested case as a result of the

Decision and the Amended Decision on behalf of the Direct Pay rate payers and has exhausted all of its administrative remedies in attempting to resolve this matter at the agency level.

### **Jurisdiction**

10. Jurisdiction is provided to this Court pursuant to R.I. Gen. Laws §42-35-15 of the Administrative Procedures Act and the Attorney General appeals the Decision and the Amended Decision pursuant thereto as a contested case.

11. Plaintiff, Attorney General Peter F. Kilmartin, files the within Complaint and appeal on the grounds that Defendant and Appellee's Decision and Amended Decision is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error or law;
- (e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

12. The Attorney General alleges that the Commissioner's Decision and Amended Decision are erroneous and should be vacated pursuant to R.I. Gen. Laws § 42-35-15(g)(1)-(6) because the Commissioner, in her Decision and Amended Decision, acted unlawfully, arbitrarily, and committed errors of law.

13. The Commissioner's Decision and Amended Decision fails to satisfy the statutory requirement that the rates be both "consistent with the proper conduct" of Blue Cross's business

and consistent with the “interest of the public,” pursuant to R.I. Gen. Laws §§ 27-19-6 and 27-20-6. In rendering her Decision and Amended Decision, the Commissioner abused the powers and duties vested in her pursuant R.I. Gen. Laws § 42-14.5-2.14, and committed an error of law.

14. The Commissioner relies upon standards for determining reserve levels that are outside of the applicable provisions governing both Blue Cross and health insurance insurers in general.

15. Commissioner Hittner relies upon a decade old report, the so-called Lewin report, and Blue Cross and Blue Shield Association requirements, rather than statutory requirements imposed by R.I. Gen. Laws §§27-19-6(c) and 27-20-6(c), which specifically apply to reserve requirements for hospital and medical service corporations, such as Blue Cross, and R.I. Gen. Laws §§27-4.7-1 *et. seq*, which apply to risk based capital for health organizations in general.

16. Specifically, Commissioner Hittner grants to Blue Cross in her Decision and Amended Decision an increase that it did not seek in its rate filing; namely, \$5.25 million in funding that Blue Cross only became aware of days after it had made its filing with the Health Insurance Commissioner. Although Blue Cross sought to retain the \$5.25 million in funding, the record indicates that Blue Cross had filed for the increase it believed was necessary at the time of its filing to satisfy 2016 claims for its Direct Pay ratepayers. The Commissioner abused her discretion and otherwise acted inconsistent with her authority and state law in ignoring the evidence in the record, the rates sought by the rate filer in its filing, the recommendations of her own Hearing Officer and the recommendations of the actuary retained by OHIC.

17. Commissioner Hittner's error also occurs through her reasoning in her misstatements and errors in reading, understanding and stating of the facts in the record relating to Blue Cross's position as to whether it expected to make payments to other insurers in the

future; whether Blue Cross factored into its 2016 rate request for Direct Pay a decrease in reimbursement through the federal reinsurance program; and her apparent misunderstanding as to the recommendation and reasoning of her Hearing Officer concerning how to allocate the \$5.25 million of additional funds and not whether to let Blue Cross retain these additional funds along with their requested 3% contribution to reserves.

18. In her reasoning to ignore the recommendations of the Hearing Officer and OHIC's actuary, and permit Blue Cross to retain these windfall monies that amount to approximately \$5.25 million, Commissioner Hittner also relied upon an incorrect understanding of the losses suffered by Blue Cross at the end of 2014 to the end of the first quarter of 2015, which is directly contrary to the evidence and testimony presented at the public hearing.

WHEREFORE, Petitioner, the Attorney General, respectfully requests this Honorable Court to:

- A. Stay the Amended Decision and Order of Commissioner Hittner dated August 19, 2015 and Order the Commissioner not to post or approve any rates for Blue Cross's Direct Pay line of business on or off the Exchange for 2016 until this matter is resolved;
- B. While this matter is pending, to cause the least possible harm to the public and Blue Cross, require Commissioner Hittner to implement the Report and Recommendation of Hearing Officer Raymond Marcaccio, including his finding of fact Number 33 (located on page 33) to determine the appropriate premium rates for Blue Cross's Direct Pay subscribers for 2016 on and off the Health Exchange,
- C. Reverse and vacate the Decision and the Amended Decision of the Commissioner pursuant to R.I. Gen. Laws § 42-35-15(g), and adopt the complete Report and

Recommendation of Hearing Officer Raymond Marcaccio, Esq. dated July 27, 2015;  
and

D. Order such other relief as this Court deems appropriate.

Respectfully submitted,

PLAINTIFF,

By Its Attorney,

PETER F. KILMARTIN,  
in his capacity as the ATTORNEY GENERAL  
for the State of Rhode Island

*/s/ Genevieve M. Martin*

*/s/ Malena Lopez-Mora*

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of August, 2015

*/s/ Genevieve M. Martin*

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